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C O N F I D E N T I A L KATHMANDU 002939

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TAGS: [PGOV](#) [PREL](#) [NP](#)
SUBJECT: PRO-PALACE SUPREME COURT APPOINTMENTS

REF: A. KATHMANDU 2654

[1](#)B. KATHMANDU 2649

[1](#)C. KATHMANDU 2885

Classified By: ADCM Robert Hugins. Reasons 1.4 (b/d).

Summary

[1](#)1. (C) On December 28, the King appointed four pro-Palace judges to the Supreme Court, including former Attorney General Pawan Kumar Ojha who resigned his post on December 25 to accept the Supreme Court nomination. Supreme Court judges must retire at age 65, but there were no new vacancies or expected retirements, so the new appointments were in addition to the twenty current judges, and were appointed to serve a fixed term in an ad-hoc capacity. The Nepal Bar Association (NBA) strongly opposed the appointment of judges loyal to the Palace and current government and warned that they would not accept such people as judges. Newspaper editorials supported the NBA's call for judicial independence, urging the government to appoint judges who could "defend the supremacy of the Constitution and uphold the dignity of an independent judiciary." The appointments came at a time when the Supreme Court continued to issue stay orders on government actions, such as the order issued on December 26 staying implementation of the government's NGO Code of Conduct. End Summary.

Attorney General Ojha Resigns

[1](#)2. (C) On December 25, the King accepted the resignation of Attorney General Pawan Kumar Ojha and appointed senior advocate Laxmi Bahadur Nirala as the new Attorney General. Nirala was viewed as a royalist because he argued on behalf of the government before the Supreme Court on June 2, supporting the constitutional legality of the establishment of the Royal Commission on Corruption Control (RCCC) and last year was chief of the civic committee formed to welcome the King to Janakpur. However, Yubaraj Ghimire, Kathmandu School of Law, told Emboff that Nirala was a well respected lawyer, and "a good choice."

Ojha Nominated As Ad-Hoc Supreme Court Appointee

[1](#)3. (C) Shortly after his resignation, the Judicial Council

recommended Ojha and three other pro-palace people to the King for appointment as Supreme Court ad-hoc judges. The four new ad-hoc justices, Ojha, Bipulendra Chakravarti, Tahir Ali Ansari, and Rajendra Prasad Koirala, were sworn in on December 28. A December 27 Kathmandu Post front page article reported that the Judicial Council had rejected the names of two of the appointees in the past, but the Minister of Law and Justice urged their inclusion this time. The article noted that Ojha, as the Attorney General, had defended the King's actions, including the controversial RCCC, and quoted anonymous sources who said that "efforts were underway to appoint lawyers who defended the RCCC at the Supreme Court as judges at appellate courts." A bureaucrat at the Judicial Council explained to Emboff that Article 93 of the constitution provided for the Chief Justice to chair a Judicial Council, composed of the Minister of Law and Justice, the two senior Supreme Court justices, and an eminent legal personality, to suggest names to the King for appointment to the Supreme Court. Supreme Court Joint Registrar Durga Prasad Dawadi told Emboff that the constitution provided for fourteen permanent Supreme Court Judges in addition to the Chief Justice. If needed, other Supreme Court judges could be added on an ad-hoc basis, for a fixed term, usually two years, to handle an increasing number of cases. He noted that while Supreme Court judges must retire at age 65, there were no new vacancies or expected retirements, so the new appointments were ad-hoc additions to the previous 20 Supreme Court judges, bringing the number of present judges to 24.

Bar Association Opposes Pro-Palace Appointments

14. (C) The NBA issued a press release on December 26, strongly opposing the Judicial Council's preparations to appoint judges loyal to the Palace and current government. "We will not accept as a judge someone who wants to curtail the fundamental rights of people as guaranteed by the constitution and who does not recognize the fundamental supremacy of the judiciary," said the NBA statement. NBA General Secretary Madhav Banskota said that the NBA had suggested the names of five senior advocates at the request of the Chief Justice. Noting that none of NBA's suggested names appeared on the Judicial Council recommendation list, Banskota alleged that the Chief Justice was "trying to appoint such unfit persons even after our criticism."

Newspaper Editorials Call for Judicial Independence

15. (U) Newspaper editorials in vernacular and English papers called for judicial independence. The December 28 Kathmandu Post editorial entitled "Protect Judiciary" said "the government should appoint Supreme Court justices on the basis of merit and not on the basis of political affiliation." It warned, "if the government neglects the concern shown by the lawyers and general public, it will definitely make things worse." It concluded, "the Post urges the government to appoint those who can defend the supremacy of the Constitution and uphold the dignity of an independent judiciary." Similarly, the December 28 Himalayan Times editorial said, "the impending announcement of the appointment of four judges to the Supreme Court includes people who are perceived to bear prejudice against the 1990 Constitution and to be supporters of the widely criticized royal steps of October 4, 2002 and February 1, 2005." It noted that "nobody who is seen to be too close to the palace or the political parties or to any vested interests should be thought fit to become a judge." It concluded, "the current appointments would hardly do credit to the already eroding public image of the apex court."

Supreme Court Stays NGO Code

16. (U) The appointment of new ad-hoc judges comes as the Supreme Court continues to issue stay orders on controversial government actions. On December 26, the Supreme Court

ordered the government not to enforce the controversial NGO Code of Conduct until the Court received written replies from defendants in the case. This ruling followed Supreme Court orders staying government action against the media (ref A), and promoting the rights of women and children (ref B and C).

Comment

[¶7.](#) (C) The King appears displeased with the independence of the judiciary. Appointing pro-monarchy judges to Nepal's highest court is yet another sign that he is determined to follow his own path and timeline to try to restore Nepal's political stability and thwart the Maoist insurgency.

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